

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service;)	

To: The Commission

REPLY COMMENTS OF SMITH BAGLEY, INC.

Smith Bagley, Inc. ("SBI") by counsel and pursuant to the FCC's recent Public Notice,¹ hereby submits the following reply comments in the above-captioned proceeding. SBI has set forth compelling reasons why the Commission should take immediate action to extend Tier 4 Lifeline and Link-up benefits to the Eastern Agency of the Navajo reservation. Grant of this waiver will permit all eligible carriers serving that area to either extend these benefits to a population that is overwhelmingly Navajo and critically unserved and underserved.

I. Verizon Has No ILEC Affiliates that Would be Affected by a Grant of SBI's Petition.

Verizon Communications, Inc. ("Verizon") is the only party to have filed comments on SBI's petition. Verizon filed comments on behalf of its local exchange carrier affiliates listed on Attachment A of its comments. Notably, none of those affiliates operate in the Eastern Agency of the Navajo Reservation. Since SBI's request for relief is limited to that one geographic area, it is simply not possible for Verizon's ILEC operations to be affected in any way by a grant of SBI's petition.

¹ Smith Bagley, Inc., Requests A Waiver Of "Near Reservation" Definition As Codified In Section 54.400(E) Of The Commission's Rules For Eastern Navajo Agency Of The Navajo Nation In The State Of New Mexico, DA 04-846 (released March 26, 2004).

Verizon does have an indirect interest in the proceeding, however, by virtue of its wireless affiliate having an FCC license to serve a substantial portion of the Eastern Agency.² Verizon Wireless is not only licensed, but on information and belief it is today providing service in some portions of the Eastern Agency. Given that SBI's requested relief would open the door to Verizon Wireless offering Tier 4 Lifeline benefits to its customers on the Eastern Agency, it is difficult to understand why Verizon would not actively support SBI's petition, unless it is attempting to forestall SBI's service offering to the many households on the Eastern Agency that do not have access to telephone service today.

II. SBI's Petition Has Nothing to do With the FCC's FNPRM.

This petition is about whether the Commission should take special action to provide people living on the Eastern Agency of the Navajo Nation with immediate access to Tier 4 Lifeline and Link-up benefits. Verizon's comments express concern about whether the record in the FCC's Further Notice of Proposed Rulemaking is sufficient to properly define where Tier 4 Lifeline and Linkup benefits should be provided.³ As a general matter, Verizon's concerns are legitimate, and have been expressed in comments filed in response to the FNPRM. Yet, they have absolutely nothing to do with SBI's petition.

SBI is requesting a waiver based upon unique circumstances present on the Eastern Agency. SBI has supplied ample record evidence to support immediately extending Tier 4 support to this area. President Joseph Shirley has written to Chairman Powell to request that SBI's petition be promptly granted. Verizon's concerns about whether Sacramento, California

² See, e.g., call sign KNKN264.

³ Federal State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000).

might be designated as a near reservation area are completely misplaced. SBI cannot imagine how the Eastern Agency could fail to be designated as a near reservation under any definition the FCC could approve. And even if the FCC decided to not formally designate the Eastern Agency as near reservation, the reason for approving this waiver remains compelling: this area is almost exclusively populated by Native Americans who suffer from the same conditions now present on other areas of the reservation and for whom Tier 4 support will provide immediate and vital benefits.

III. SBI's Petition Raises No Jurisdictional Issues.

As we understand Verizon's argument, because near reservation lands are or under state jurisdiction, states are in the best position to address "pockets of low subscribership." SBI is at a loss to understand how this statement raises "jurisdictional" issues. Tier 4 support is a federal program which the FCC is free to implement in any manner consistent with the Communications Act. Nothing the FCC has proposed in its FNPRM affects state sovereignty or impinges upon a state's ability to enact universal service programs aimed at increasing telephone subscribership or eradicating pockets of low subscribership.

SBI's petition is aimed at eradicating one of most glaring pockets of low subscribership in the country. SBI welcomes any additional action that the State of New Mexico may take to aid its citizens, but at this time the FCC's Tier 4 program has been very successful in increasing telephone subscribership in Arizona and it is absolutely the shortest distance between two points in terms of expediting benefits to New Mexico citizens who need them most.

IV. The Commission Should Promptly Grant SBI's Petition.

Because it has rapidly deployed facilities in Arizona to reach Native American consumers, SBI is well positioned to extend its outreach program to the Eastern Agency in New

Mexico. Yet, SBI would not be the sole beneficiary of a grant. Any eligible carrier may construct facilities and extend Tier 4 benefits to persons on the Eastern Agency. The biggest beneficiaries are not the companies, but Eastern Agency residents who would soon see low-cost telephone service and improved infrastructure.

SBI has applied to extend its ETC status onto the Eastern Agency and has been anticipating action for months now. As soon it receives a grant, SBI intends to commence construction of substantial facilities in areas that are unserved and underserved. With a grant of its petition, SBI will be able to offer customers the same low-cost program that has been very successful on Navajo lands in Arizona.

V. Conclusion.

No party has raised any serious issue with respect to SBI's very narrowly tailored request. As required by prevailing law, SBI has demonstrated unique and compelling circumstances why its request should be promptly granted. The Commission will open the door to basic telephone service for literally thousands of people who have been ignored for decades. SBI is devoted to serve throughout its service area and stands ready to extend Tier 4 Lifeline benefits to eligible subscribers immediately upon obtaining appropriate authority.

Accordingly, SBI respectfully requests the Commission to promptly grant the relief requested in its petition.

Respectfully submitted,

Smith Bagley, Inc.

By: /s/
David A. LaFuria
Steven M. Chernoff
Its Counsel

Lukas, Nace, Gutierrez & Sachs, Chartered
1111 19th Street, N.W.
Suite 1200
Washington, DC 20036
202-857-3500

May 13, 2004

CERTIFICATE OF SERVICE

I, Kimberly Verven, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 13th day of May, 2004, placed in the United States mail, first-class postage, prepaid, a copy of the foregoing Reply Comments of Smith Bagley, Inc. filed today to the following:

Ann H. Rakestraw, Esq.
1515 North Courthouse Road, Suite 500
Arlington, VA 22201
Counsel for the Verizon telephone companies

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, SW, Room 8-A204B
Washington, D.C. 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, D.C. 20554

Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554

Eric Einhorn, Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-C360
Washington, D.C. 20554

Diane Law Hsu, Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-A445
Washington, D.C. 20554

Anita Cheng, Assistant Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-A445
Washington, D.C. 20554

Geoffrey C. Blackwell
Consumer and Government Affairs Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-B438
Washington, D.C. 20554

/s/
Kimberly Verven